

# Supreme Court of the United States

OCTOBER TERM, 1965

No. 760

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MICHAEL VIGNERA, PETITIONER

vs.

NEW YORK

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ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE  
STATE OF NEW YORK

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[fol. A]

IN THE COUNTY COURT, KINGS COUNTY  
THE PEOPLE OF THE STATE OF NEW YORK, PLAINTIFFS  
against

MICHAEL VIGNERA, DEFENDANT

INDICTMENT—filed December 15, 1960

FIRST COUNT

The Grand Jury of the County of Kings, by this indictment, accuse the defendant of the crime of ROBBERY IN THE FIRST DEGREE, committed as follows:

The defendant on or about October 11, 1960, in the County of Kings, unlawfully took from the person, possession and in the presence of HARRY ADELMAN a quantity of checks and United States currency, of the aggregate value of more than five hundred dollars, owned by HARRY ADELMAN, against his will, by means of force and violence, and fear of immediate injury to his person, the defendant at the time being armed with a dangerous weapon, to wit: a dangerous knife.

[fol. B]

SECOND COUNT

The Grand Jury of the County of Kings, by this indictment, accuse the defendant of the crime of GRAND LARCENY IN THE FIRST DEGREE committed as follows:

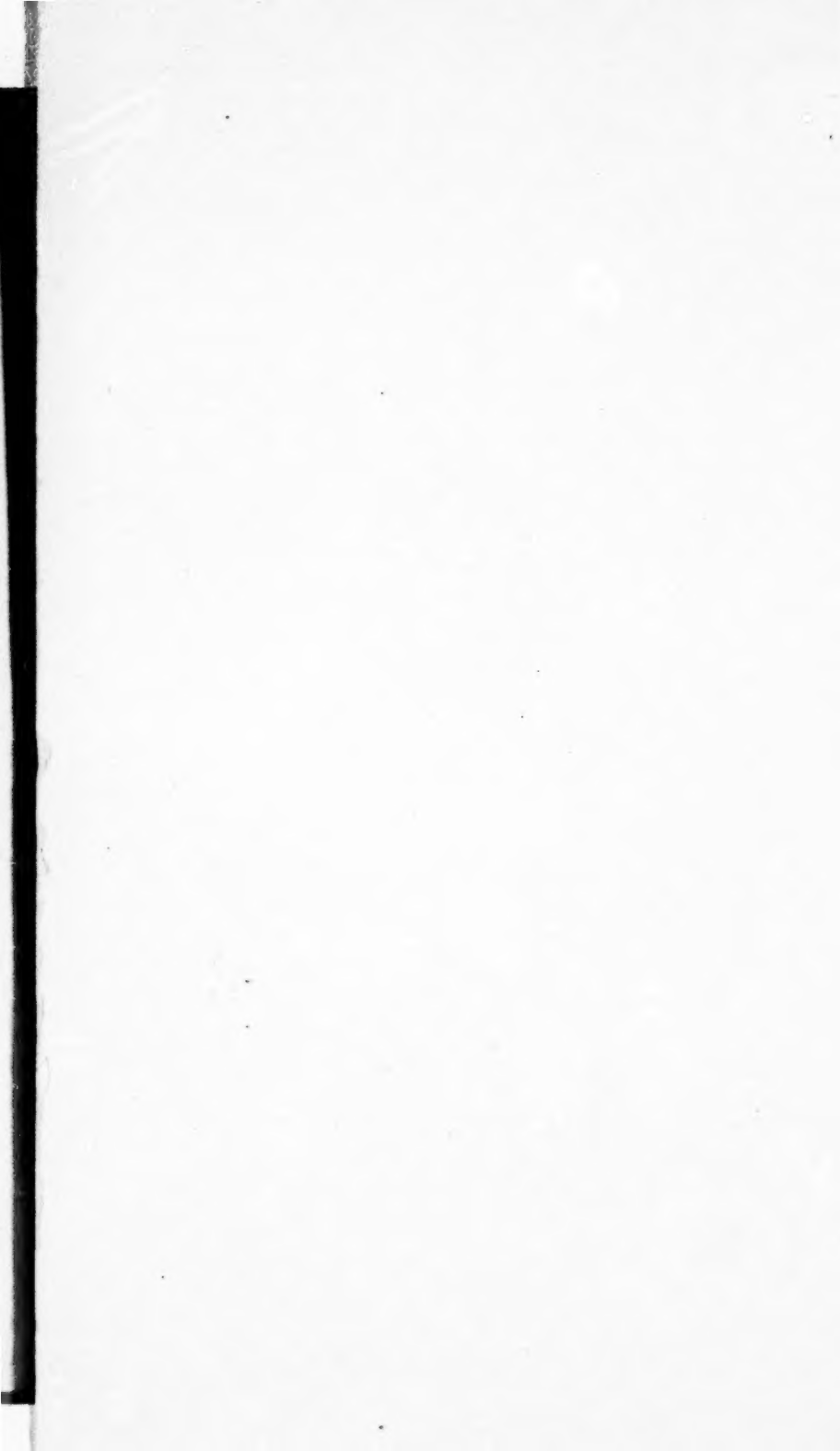
The defendant on or about October 11, 1960, in the County of Kings, stole and took from the person, possession and in the presence of HARRY ADELMAN in the night time a quantity of checks and United States currency of the aggregate value of more than five hundred dollars, owned by HARRY ADELMAN, with the intent to deprive the owner thereof, and of the use and benefit thereof, and to appropriate the same to the use of the defendant.

**THIRD COUNT**

The Grand Jury of the County of Kings, by this indictment, accuse the defendant of the crime of **ASSAULT IN THE SECOND DEGREE**, committed as follows:

The defendant on or about October 11, 1960, in the County of Kings, with intent to commit the crimes of robbery and grand larceny, wilfully and wrongfully assaulted **HARRY ADELMAN**.

/s/ Edward S. Silver  
District Attorney



[fol. C]

May 13/1961 - Hearing under 662 a.c.c.p. is  
adjourned. & on motion of defense Counsel  
Arthur Lubkin Esq, the defendant is  
remanded to Bellevue Hospital for Psychiatric  
Examination & Report. No objection by  
Dist. Dist. Atty, Lawrence Wiseman

Starkey (4) J

Feb 8/61  
Hearing held. concluded. Defs same.  
Eda Wiseman, Defs and Counsel Present.  
Lebrun, J. D.

MAK'S 1961

DEPENDENT PERSONALLY APPEARS AND AD-  
VISED BY THE COURT OF HIS RIGHTS PUR-  
SUANT TO SECTION 87(2)(b). HAVE YOU A

LEGAL COUNSEL OR DO YOU WANT ONE?

HAVE YOU MONEY TO RETAIN A LAWYER?

YES OR NO? IF YOU WANT THE COURT

TO ASSIGN A LAWYER, YES OR NO.

NAME OF LAWYER ASSIGNED: Arthur Lubkin Esq

Present

Reads Not Guilty

Bail \$16000 - Remanded

ad. Sham

RINALDI (6)

5-23-61. On motion of defense counsel Arthur  
 Lubkin, Bellevue Hospital Psychiatric  
 report confirmed - *Leibowitz*

TRIED

Part 1 8/28/61-8/29-8/30/61

*George Leibowitz*

add Ernst

VERDICT Guilty of Robbery  
 1st Degree.

Defendant Remanded

8/30/61 2<sup>nd</sup> *Leibowitz*

Nov 3/61 3<sup>rd</sup> fel off. Info filed. DT is  
 arranged, advised, admits, adjudged 3<sup>rd</sup> fel off.  
 Waived 2 days. See sentence

*Leibowitz* *JD*

Info: This indictment having been in the Appellate Division  
 re-appointed and is available on 1/6/63. This endorsement is made  
 on 1/6/63 as of 1/6/63.  
 2/6/63. The Deft. was sentenced on 11/3/61 as a 3<sup>rd</sup> felony offender  
 to Long Term State Prison for Twenty (20) to Sixty (60) yrs.  
 Counsel Arthur Lubkin moves to vacate and set aside the  
 sentence. As there has been no change in the information as a  
 2<sup>nd</sup> offender. Deft. was a 2<sup>nd</sup> offender. The information as a  
 2<sup>nd</sup> offender. Adjudged 2<sup>nd</sup> offender. Deft. advised  
 permanent fee to S.C.P.  
 Sentence - Long Term State Prison for Twenty (20) to Sixty (60)  
 years. Remanded to Leitchburg, N.Y. on 1/6/63

[fol. D]

FEB 3 1961 Arraigned  
adjourned to 2/16/61

NO. 4014/1960

18 40

(TRIAL)  
HON. J. H. BARSHY  
FEB 16 1961

THE PEOPLE

vs.

Time - Part  
Judge DEFENDANT FAILED TO APPEAR  
ARRAIGNMENT ADJOURNED TO 2/16/61  
A. D. A. MICHAEL S. LEIBOWITZ

Verdict

*See inside*

J. MICHAEL VIGNER

(PLEA)

INDICTMENT

ROBBERY—FIRST DEGREE

GRAND LARCENY—FIRST DEGREE

ASSAULT - SECOND DEGREE

Part

Judge

A. D. A.

Pleads Guilty to

A TRUE BILL

EDWARD S. SILVER

District Attorney

Defendant personally appears and advised by the Court of his rights pursuant to Section 308, C.C.P. Have you a lawyer? Yes or no.  
Have you money to retain a lawyer? Yes or no.  
Do you wish the Court to assign a lawyer? Yes or no.

not present  
Name of Lawyer assigned Arthur Lubkin  
4114 - 4 Ave.oklyn

Assigned for arraignment only  
(See inside)

Pleads Not Guilty. DEC 15 1960

Bail \$10000 Run

Judge HON. HYMAN BARSHY

A. D. A. Cohen DEC 15 1960

Filed DEC 15 1960 - In arrears  
bail vacated. Left court  
to K.C.H. for mental observation  
March 21



True Name Michael VignereMale ☒ Female ☐ Color WAge 31 Nativity B. C.Residence 970 42 St  
B. C.Occupation LiberalMechanical Trade NoneMarried Yes ☐ No ☒Read and Write Yes ☒ No ☐Degree of Education H S gradReligion CatholicDegree of Religious Instruction GregParents Living FatherTemperate ☒ Intemperate ☐Drugs Yes ☐ No ☒Previous Conviction 2 F. 2 M.Sentence Sing Sing thirty (30)to Sixty (60) yrsJudge LebanonDate Nov 30 1967Atty Arthur Lubkin present3rd fl 17th - see inside

True Name

Male Female Color

Age Nativity

Residence

Occupation

Mechanical Trade

Married Yes No

Read and Write Yes No

Degree of Education

Religion

Degree of Religious Instruction

Parents Living

Temperate Intemperate

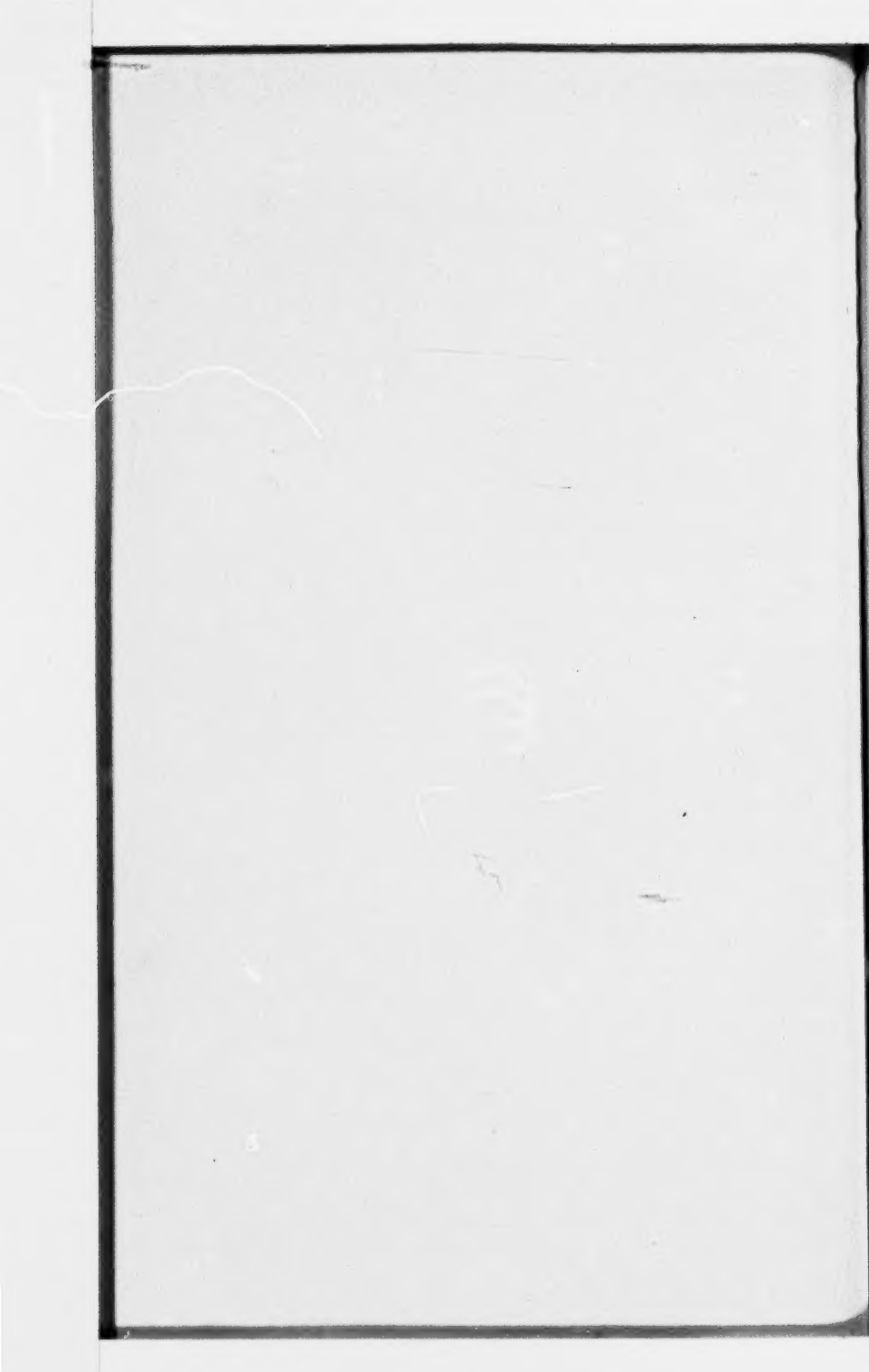
Drugs Yes No

Previous Conviction F. M.

Sentence

Judge

Date



[fol. 1]

IN THE COUNTY COURT  
KINGS COUNTY

TRIAL TERM

PART I

THE PEOPLE OF THE STATE OF NEW YORK

against

MICHAEL VIGNERA, DEFENDANT

Indictment No. 4014/60: Rob. 1; Gr.Lar. 1; Aslt. 2  
Brooklyn, New York

TRANSCRIPT OF PROCEEDINGS—August 28, 1961 et seq.

BEFORE:

HON. SAMUEL S. LEIBOWITZ,  
County Judge

APPEARANCES:

J. MITCHELL ROSENBERG, ESQ.,  
Assistant District Attorney  
For the People

A. LUBKIN, ESQ.,  
Attorney for the defendant

Martin Barris, CSR (els)  
Official Stenographer

[fols. 2-4] \* \* \*

[fol. 5] HARRY ADELMAN, called as a witness by the People, having been first duly sworn by the Clerk of the Court, and stating his address as 1347 48th Street, Brooklyn, testified as follows:

## DIRECT EXAMINATION

BY MR. ROSENBERG:

Q Mr. Adelman, how old are you, sir? A 61.

Q Are you the owner of a dress shop known as the Chapeaux de Mode located at 4822 13th Avenue in the Borough of Brooklyn, County of Kings? A Yes, sir.

Q How long have you been the owner of that shop? A 35 years.

Q Now, on October 11, 1960, that was a Tuesday, is that correct, sir? A That's right.

Q Now, on October 11, 1960, sometime in the afternoon, you were in the shop, is that correct? A Yes.

Q And did someone come into the shop? A Yes.

Q About what time was that? A 5:30, quarter to six, approximately.

Q In the afternoon? A In the afternoon.

Q Was it daylight? A Yes.

Q Tell us, please, what happened. A A man walked up to me and said it is a stickup. He put something [fol. 6] behind me and said it is a stickup, so I turned around by saying, "Are you kidding?" He said, "Walk to the back and don't make any wrong moves." We walked to the back.

Q Was something still behind you? A Naturally.

Q What was behind you? A To me it looked like a knife when I first glanced at it.

We walked to the back. My wife was in the back and another girl, a saleslady, she was doing some ironing in the back. So I happened to turn to a spot away from her like I was in a corner, like, so he put the knife—and I walked away, so he put the knife to her this way and holding it around this way, around the neck.

Q I am going to show you a picture and ask you is that an exact representation of the inside of your store

on October 11, 1960 (handing to witness). A That's my store.

MR. ROSENBERG: I offer that as People's Exhibit 1 in evidence.

THE COURT: Is there any objection?

MR. LUBKIN: No, your Honor.

(Marked People's Exhibit 1 in evidence.)

BY MR. ROSENBERG:

Q Do you walk through a doorway from the front portion of your store to the rear part of the store? A [fol. 7] This is the front part, then there is a back part.

Q I am going to show you these two photographs and I am going to ask you whether the two photographs together are an exact representation of the rear part of your store on October 11, 1960 (handing to witness). A That's it. This is the front of the back and this is the side of the back.

MR. ROSENBERG: I offer the two in evidence.

THE COURT: Any objection?

MR. LUBKIN: No objection.

THE COURT: Mark them in evidence.

(Marked People's Exhibits 2 and 3 in evidence.)

MR. ROSENBERG: May I pass the three, your Honor, to the jury?

THE COURT: Yes.

BY MR. ROSENBERG:

Q Mr. Adelman, you say the defendant had you go to the rear room at knife point; is that right? A That's right.

THE COURT: He didn't say it was the defendant.

Q The man who was in the store, is that right? A That's right.

Q Now, in the rear room you started to tell us that you went to a corner, is that right? A That's correct. [fol. 8] Q Now, can you show us where the corner is that you went to? A Yes, I could. This is the front

part on this side and where the machine is is the corner there. (Indicating.)

Q Where the ironing board is on Exhibit 2, is that right? A Yes.

Q Now, you went beyond where your sales girl was pressing? A Right.

Q Where was your wife? A She was sitting at the machine.

Q You went beyond her too? A Right there, actually near here, close to her.

Q Was this girl who was pressing, was she first? A She was the first one as you approached the room.

Q And your wife? A She was on the side.

Q You went beyond the girl that was pressing? A Right.

Q What happened then? A The man who came in, as soon as he saw the girl pressing, the first one we approached, he let me alone and put the knife and held it around first and then he made me come over to him.

Q What did he do with the girl, what did he do? A He just held her so that she can't run out.

Q What did he do with the knife? A He held it [fol. 9] against her side.

THE COURT: How did he hold it?

THE WITNESS: He put his arm around her neck.

Q You are indicating that his right arm is around the neck of this girl? A And the knife in the left hand against her side.

Q While he has the right hand around her neck? A He called me two or three times.

THE COURT: What did he say?

THE WITNESS: He said to me, "Come over here. You I want."

BY MR. ROSENBERG:

Q What was your position with respect to him then?

A He was, let's say, over here, and I was over there.

Q Were you face to face with him? A Yes.

Q You saw him face to face? A Sure.

Q He said "Come over here"? A That's right.

Q You were farther away from that door, isn't that right, from that door leading to that rear room—you are farther away than he is? A That's right.

Q So did you walk over to him? A I had to. He made me walk over by saying, "If you don't come over, I will give it to you," so I came over and gave him what I said.

Q What happened when you came over to him? A [fol. 10] He made me give him—

Q What did he say? A He said "Give me what you got in your pockets."

Q What did you do? A I had to give it to him.

Q What did you do? A I give it to him. I took it out of my pocket and gave it to him.

Q You are referring to your pants pocket now? That's correct.

Q You had money in there? A In cash, \$175.

Q In what form? A American money bill form.

Q Yes? A I had a little booklet with American Express checks, you know, a little book like they give you, like a checking account. There was \$160 worth of American Express Company checks.

Q What did you do with them? A I give him that too. I gave him everything I had in my pocket.

Q What happened then? A Then he says to me, "Take me to the register," which was in front of that back, so we went to the register and I opened the register and with his left hand he held me, I mean, with the knife that I have seen.

Q Where did he hold you with the knife? A On this side.

[fol. 11] Q Indicating your left side? A Left side.

Q Yes? A Because I had to use my right hand to open the register, as soon as I pushed the button the drawer pulled out. He took everything I had there and put it in his jacket pocket and with that he says to me, "Have you got a bathroom?" I said "Yes, the bathroom is right behind the door to the back," and he put the three of us into the bathroom and disappeared.

A minute later I got out of the bathroom and I ran out and started to yell for help. I started to yell for



help. I was all excited, naturally. I ran to a corner opposite me, the corner luncheonette. I says to the man who owns the luncheonette, "Please call the Police Department. I was just held up."

With that I ran back and noticed across the street there was a radio car with two or three officers in it, so as soon as I saw them, I called them in. They just happened to be parked there. They didn't come from the precinct on account of the call. I called them in. They calmed me down, "Take it easy," and all that, and they called the detectives on my phone and they came over in a few minutes and that's when the whole thing started.

Q How much money did this man take? A \$248.50. We have a tape. There was an extra \$20 petty cash.

Q You say your wife was in the rear too? A [fol. 12] Right.

Q Did he do anything to your wife? A No. My wife went over to him and pushed him and said, "What do you want from my husband?" She thought it was a joke. And he says to her, "Lady, better sit down and take it easy." Naturally she realized what it was then.

Q Mr. Adelman, were you frightened when you saw this knife pointed at you? A I was, quite a bit.

MR. LUBKIN: I object, it is immaterial.

THE COURT: Sustained.

Q Did you see this man again? A Next time, you mean after that? After that I saw him at the precinct, 66th Precinct.

Q When was that? A This was on a Tuesday—Friday afternoon.

Q That would be October 14th? A That's correct.

Q And will you look around the courtroom? Do you see the man now? A I do.

THE COURT: You mean the man that held you up?

THE WITNESS: I do.

Q Will you step down from the stand and point him out?

(Witness complies.)



MR. ROSENBERG: Standing in front of the defendant and pointing to and indicating the defendant.

[fol. 13] THE DEFENDANT: It's a lie, your Honor.

(Witness resumes stand.)

THE COURT: You may cross examine.

# CROSS EXAMINATION

BY MR. LUBKIN:

\* \* \*

[fols. 14-21] \* \* \*

# [fol. 22] CROSS EXAMINATION

BY MR. LUBKIN:

Q Did the police pick you up on October 14th and bring you down to the 66th Precinct? A To the 66th Precinct. They called me and I came over there.

Q By yourself, Mr. Adelman? A No, with the salesgirl.

Q With the salesgirl? A That's right.

Q Did you see this defendant? A I did.

Q At the precinct? A I did.

Q Where was he? A He was in a little room in the back there. They brought him out.

Q Did the police say anything to you on the telephone why you should come down to the precinct? A Yes, they told me to come down to identify the man.

[fol. 23] Q Would you tell the Court specifically what they said? A They called me to come over to identify the man to see if that is the man.

Q Did any police speak to you when you entered the precinct? A I walked into the room and they brought him out from the back or something—

Q Did you go in and identify yourself to somebody there? A They were waiting for me. They called me so naturally I knew the man, I knew the detective and I knew the other detective on the case so I walked into that room.

Q Did the detective tell you anything at all before you walked into that room? A He didn't say nothing to me.

Q Did you say anything to him? A I said I wouldn't like to even look at him. He says, "Well, you got to do some identification," so when the man came out from that room, from the little room, I didn't have to identify him, he identified me and the girl.

THE COURT: What do you mean, he identified you?

THE WITNESS: The detective says to him—

THE COURT: To whom?

THE WITNESS: To this defendant. The detective [fol. 24] said to the defendant, "Do you know these people?" He says, "Yes, I held them up."

THE DEFENDANT: That's a lie.

THE COURT: Behave yourself or I will have you restrained. Listen to what the Judge says. You maintain order or I will have you restrained and I know how to do it.

A He says, "Those are the people that I held up, the dress shop on the corner of 49th Street and 13th Avenue." That is the words he used.

Q Did you say anything to the police at that time or to the defendant? A All I said "That is the man." There was nothing else to say.

\* \* \*

[fols. 25-29] \* \* \*

[fol. 30]

Brooklyn, New York  
August 29, 1961

(Same appearances as heretofore noted.)

(Jurors return; roll called; trial resumed.)

GERTRUDE ADELMAN, called as a witness by the People, having been first duly sworn by the Clerk of the Court, and stating her address as 1347 48th Street, Brooklyn, New York, testified as follows:

MR. ROSENBERG: Can we have these blow-ups posted?

THE COURT: Any objection?

MR. LUBKIN: Are these the same as yesterday?

THE COURT: Yes.

MR. LUBKIN: All right.

DIRECT EXAMINATION

BY MR. ROSENBERG:

Q Madam, are you the wife of Harry Adelman? A Yes.

Q The owner of that dress shop on 13th Avenue? A Yes.

Q On October 11, 1960, at about 5:30 in the afternoon, were you in the rear of the store? A Yes, I was.

[fol. 31] Q What were you doing? A I was sewing at the sewing machine.

Q Was the sewing machine in operation at the time? A Yes, sir.

Q Did you see something happen? A Yes, I saw my husband and a gentleman come in the back and I was running the machine and they stood there and my husband came in back of me—there is a little section in back of where I sit and this man said, "I want to see you," and he was holding the saleslady.

Q The man said to whom "I want to see you"? A To my husband.

Q You say the man was holding the saleslady? A Yes.

Q Show the jury, please, how the man was holding the saleslady. (Witness complies.)

Q Where was the saleslady, by the way? A Standing at the ironing board.

Q Show us how he was holding her.

(Witness complies.)

MR. ROSENBERG: Indicating the right hand around the right shoulder of the salesgirl and he had a knife in the other hand.

Q A knife in the left hand and doing what, pointing [fol. 32] the knife at the ribs of the salesgirl? A Yes.

Q Where was the salesgirl? A Standing at the ironing board which is near—before the sewing machine. I face the ironing board.

Q Your husband was behind you? A Yes.

Q Is there a frigidaire behind you? A Yes.

Q Was your husband near that frigidaire? A That's right.

Q Did you see the knife? A Oh, yes.

Q Will you describe as best you can what kind of a knife it was? A About four, five inches, narrow, shiny silver.

Q The blade? A Yes.

Q You saw the whole knife? A Oh, definitely.

Q When this man said that to your husband, you come here, what happened then? A Well, I thought he was fooling so I says, "Leave my husband alone," and I pushed him.

Q You pushed this man? A I got up from my chair and pushed him and said, "You leave my husband alone. That's all. He didn't answer me. Then he said, "I'll give it to this girl." He held the girl and my husband said, "Just a minute," and he came out and he says, "Let me have everything you have in your pocket."

Q Who said? A The fellow did.

[fol. 33] Q What did your husband then do? A Gave his everything he had in his pocket.

Q Money? A Yes, whatever he had. He had papers and money and things like that. He had a Diner's Club, he had various things in his pockets.

Q You saw a Diner's Club card? A He always carried it.

MR. LUBKIN: I object, your Honor, that is an assumption.

THE COURT: Don't lead.

Q What did you see your husband turn over to this man? A Everything he had in his pockets including money and a Diner's Club and everything else.

Q You mean a Diner's Club credit card? A You know what I mean, the card, the book, whatever you call it.

Q Then what happened? A Also the Express money orders.

Q Express money checks? A That's right.

Q Go ahead. A Then he said, "Take me to your register."

Q Who is he? A The fellow that held us up.

Q Yes? A I stayed in the back with the salesgirl.

Q Was anything said to you about where you were [fol. 34] to stay? A No, no, he just said "Stay here."

Q He said that? A Yes, and he took my husband to the front. The register is in the front of the store, towards the back of the front, and he emptied the register.

Q Did you remain behind in the rear? A Yes, sir, with the girl. Then he came back with my husband again in the back of the store which is a workroom and he says, "Where's your bathroom," and we have a little bathroom and he put the three of us in the bathroom and then he walked out.

Q Now, when the two of them walked from the rear to the front of the store, did you see the knife at that time? A I tell you the truth, I was afraid to look. I didn't even move.

Q What happened after you were put into the bathroom? A We stayed there, I don't know, a minute or two minutes. I don't really know, and we opened it and my husband ran out and the salesgirl called up the police and my husband ran out and there was a police car parked on the other side of the street.

Q Now, do you see that man in the store—I'm sorry, in the courtroom? A I am sure it is this fellow here.

Q Will you step down, please, from the witness stand [fol. 35] and point out the man? A (Witness complies) It is this man (indicating).

MR. ROSENBERG: She is at the table where the defendant is seated and she is pointing to and indicating the defendant.

THE COURT: Return to the stand, Madame, please. You may cross examine.

. . .

[fols. 36-46] . . .

[fol. 47] ANITA WALDINGER, called as a witness by the People, having been first duly sworn by the Clerk of the Court, and stating her address as 1315, 48th Street, Brooklyn, New York, testified as follows:

## DIRECT EXAMINATION

BY MR. ROSENBERG:

Q Madame, are you the saleslady in the Chapeaux de Mode located on 13th Avenue, Brooklyn? A Yes.

Q 4822 13th Avenue, Brooklyn? A Yes.

Q How long have you been a salesgirl there? A Five and half to six years.

Q On October 11, 1960, at about 5:30 in the afternoon, were you in the rear room? A Yes, I was.

Q Tell us please where you were and what happened. A I was at the ironing board and when Mr. Adelman came in, he said "It's a stickup," and he walked in and this fellow, he came in and took me around by the neck and had a knife against my ribs.

Q You saw the knife, Madame? A I sure did.

[fol. 48] Q Can you describe the knife? A Well, it was a long, shiny knife.

Q Yes? A That's all I know.

Q Go ahead. A He held it against my ribs and he said to Mr. Adelman, "You I want. If you don't come out, I'll let her have it."

Q Where was Mr. Adelman then? A He was in the back near the refrigerator.

He came out and that's when he let go of me. Then he walked—

Q What happened when Mr. Adelman came out? A Mr. Adelman emptied out his pockets. He told him to empty out his pockets and give him everything he had in the pockets. He did that.

Q Did you see what he did when he emptied out his pockets? A He gave him everything he had in his pockets, the wallet, and he gave him everything he had, and then he walked—told him to walk slowly and told us to remain in the back. A few minutes later he came back and locked us into the bathroom. He told us to stay there



for a while. Then when we walked out of the bathroom, I went to the telephone to call the police and Mr. Adelman went outside to get some help.

Q Did you subsequently go to a police station? A No.

[fol. 49] Q Subsequently means afterwards. A That night we went to the police station and looked at pictures.

Q Did you see somebody in the police station? A Just the detectives.

Q Did you see a man in the police station? A When I went to identify him, I did.

Q When was that? A That was a few days after the hold-up.

Q Now, did you hear this man say anything? A Yes, this man—the detective asked the man, “How do you know these people?” and he says, “From the dress shop.”

Q Who was there? A Myself, Mr. Adelman and the two detectives.

Q Now, do you see the man in the courtroom who held the knife against your ribs and who said to the detectives in your presence, “I know these people from the dress shop”? A Yes, I do.

Q Will you stand up and step around, please, and point him out? A (Witness complies.)

MR. ROSENBERG: Pointing to the defendant at the defense table.

THE COURT: You may cross examine.

## CROSS EXAMINATION

BY MR. LUBKIN:

\* \* \*

[fols. 50-54] \* \* \*

[fol. 55] Q On what date did you go to the precinct to identify this defendant? A I don't remember the date but it was on a Friday.

Q Morning, afternoon, evening? A It was in the morning sometime.

Q Did anybody call you to come to the precinct?  
[fol. 56] A Yes.

Q What did they tell you? A Nothing.

Q Did a detective, an officer of the Police Department call you? A He didn't call me. He called Mr. Adelman.

Q Then you didn't speak to him? A I didn't speak to no one.

Q What did Mr. Adelman tell you after the phone call? A Just to go down to the precinct.

Q Did you go with Mr. Adelman? A Yes.

Q Is that the first time you went down to the precinct to identify anybody? A Yes.

Q When you went to the 66th Precinct, did you speak to anybody, any detective? A Yes, I did.

Q What did the detective tell you? A The detective just asked this boy—

THE COURT: No, no.

Q Nobody spoke to you? A No.

Q Did you identify yourself to anybody? A Yes, they called me down.

Q You walked into the precinct. Did you identify yourself to anybody that you are Mrs. So and So? A To one of the detectives, yes.

Q What did the detective tell you? A Just to come [fol. 57] and identify the man, that's all.

Q The man? A Yes.

Q That's all the detective said? A That's all.

Q Where did the detective take you within the precinct? A To a little room.

Q Who was present in that room? A Mr. Adelman and I and one of the detectives, or two, I don't remember.

Q That's all? A That's all.

Q Was this defendant there? A Then they brought him out.

Q You went into the room and then they brought him out? A That's right.

Q Did you actually go into the room? A No, I was standing by the door.

Q What did you say to the detective then? A Just that that's the man.



Q Are you referring that that's the man that was in the store on October 11th? A That's right.

Q Did you have a police line-up? A I beg your pardon?

Q Did the detective—

THE COURT: Was he the only man in the room there with the detective?

[fol. 58] THE WITNESS: Yes.

Q Between October 11th and October 14th, did you go down to any police precinct to identify anybody? A No, just pictures.

MR. LUBKIN: I have no further questions.

THE COURT: Step down.

VITO LENTINI, called as a witness by the People, having been first duly sworn by the Clerk of the Court, and stating his address as Room 409, Municipal Building, testified as follows:

#### DIRECT EXAMINATION BY MR. ROSENBERG:

Q Mr. Lentini, are you a stenographer, Civil Service stenographer, in the employ of the District Attorney of Kings County? A Yes, I am.

Q How long have you been serving in that capacity? A Five years.

Q Have you in that capacity taken statements of witnesses and defendants? In other words, the District Attorney asks questions and you record them on a stenotype machine and you also record the answers of defendants; is that right? A That's right.

Q Have you testified before Grand Juries in the courts of this county? A Yes, I have.

Q Many times? A Yes.

Q Now, on October 14, 1960, were you present at [fol. 59] the 70th Precinct when Assistant District Attorney Postal questioned this defendant? A Yes, I was.

Q Did you record on your stenotype machine the questions which Mr. Postal asked the defendant and the answers which the defendant gave to Mr. Postal to those questions? A I did.

Q Did you then transcribe those questions and answers? A Yes, I did.

Q Did you compare the transaction with your original notes? A Yes.

Q Is it an accurate transcription? A It is.

Q Will you look at it, please? Is that an accurate transcription of the questions put by Assistant District Attorney Postal and the answers given by this defendant to Mr. Postal? A Yes, it is.

#### OFFER IN EVIDENCE

MR. ROSENBERG: I offer it in evidence.

MR. LUBKIN: I object, your Honor, this is not the best evidence.

THE COURT: Overruled.

MR. LUBKIN: I will take an exception.

THE COURT: Have you read the Randazzo case?

MR. LUBKIN: Exception on the ground this is not the best evidence.

THE COURT: I refer you to the Randazzo case.

Read your notes and compare. You are reading from [fol. 60] the original notes that you made in the station house on the night the defendant was arrested, right?

THE WITNESS: Yes.

THE COURT: And the questions that were put to him by the Assistant District Attorney and the answers made?

THE WITNESS: Yes.

THE COURT: You took all of these things down on a stenotype machine, the same as Miss Shanser is using here in this courtroom, our shorthand reporter?

THE WITNESS: Right.

THE COURT: Now read your original notes.

MR. ROSENBERG: For the record, your Honor, Statement No. 2294.

THE WITNESS: (Reading) "Q What is your name? A Michael Vigners.

"Q Where do you live? A 970 42nd Street.

"Q How old are you? A Thirty-one.

"Q On October 11, 1960, did you go to a dress shop at 4822 13th Avenue in Brooklyn? A Yes.

"Q What time did you go there? A About four o'clock, I think.

"Q Could it be as late as 5:30 or later? A No.

"Q Did you go alone? A Yes.

[fol. 61] "Q Did you have any weapon with you? A A toy gun.

"Q Where did you have the toy gun when you went into the store? A My pocket.

"Q When you got into the store, how many people were there? A I only saw two.

"Q What did you do with reference to the gun; did you take it out of your pocket? A Yes.

"Q Then what did you do with it? A I announced it was a hold-up.

"Q Did you point the gun at anybody? A It wasn't actually necessary but I guess I did.

"Q You waved it at him, is that the idea? A Yes.

"Q Did you ask the man for his money? A Yes.

"Q How much money did you get from him? A I got \$93.

"Q Where did he take the money from that he gave you? A Some I think was from the register, some from his pockets, I guess.

"Q Did you say anything to the man after he gave you the money? A No, I just walked out.

"Q Was anybody involved in this job with you? [fol. 62] A No.

"Q How did you happen to pick this particular place? A The spur of the moment."

THE COURT: Do you wish to cross examine the witness?

MR. LUBKIN: Yes, your Honor.

## CROSS EXAMINATION

BY MR. LUBKIN:

Q Was anybody else in the room when you took these notes? A No one was present.

Q Was there any detective present? A The detectives weren't in.

Q Mr. Lentini, is it possible that someone else gave you those questions and answers?

MR. ROSENBERG: I object to the form.

THE COURT: Sustained.

MR. LUBKIN: Exception.

THE COURT: Put the question in another form.

Did anyone give you these questions and these answers other than—is that what you mean?

MR. LUBKIN: That's right.

THE COURT: You mean did he cook up these questions and answers? This is all a fake, is that what you mean?

[fol. 63] MR. LUBKIN: Up to the fourth question is correct.

THE COURT: Is the purport of your question that the stenographer is producing a fake record here?

MR. LUBKIN: No.

THE COURT: Go ahead.

BY MR. LUBKIN:

Q Is this a fake record? A No, of course not.

MR. LUBKIN: I have no further questions.

THE COURT: Step down.

DETECTIVE JOHN GILLEN, Shield No. 747, 66th Squad, called as a witness by the People, having been first duly sworn by the Clerk of the Court, testified as follows:

## DIRECT EXAMINATION

BY MR. ROSENBERG:

Q Detective Gillen, how long have you been in the employ of the Police Department of the City of New York? A Twelve years.

Q How long have you been serving as a detective? A Nine and a half years.

Q When did you first receive this case, the report of this case, Detective? A On October 11th about 5:45 p.m.

[fol. 64] Q When did you arrest this defendant? A October 14th at about 3:00 p.m.

Q Where? A At the 66th Detective Squad.

Q Did you have a conversation with the defendant?

A I did, yes, sir.

THE COURT: Tell us what you said to him and what he said to you.

THE WITNESS: I asked the defendant whether he had committed the hold-up at the place and he stated he had.

THE COURT: What place?

THE WITNESS: 4822 13th Avenue, and he stated he had. I asked him what he had used. He stated he had used a toy gun. He stated that he took the money from the complaint and that he made his escape along 49th Street, to the 49th Street elevator station. Later on in the conversation he stated he didn't use a toy gun but had used a knife.

BY MR. ROSENBERG:

Q When was that? A That was in the patrol wagon the next day going to court.

Q Did he say what he had done with the knife? A He stated he threw it away.

Q Now, did he tell you how much money he had obtained? A He stated he obtained about \$93.

[fol. 65] Q Now, at any time was Mr. Adelman and Mrs. Waldinger present? A Yes, sir, they were brought in.

THE COURT: Just take it nice and easy. Be very careful about the questions.

MR. ROSENBERG: I know, your Honor, I am referring only to what the defendant said in the presence of Mr. Adelman and Mrs. Waldinger.

THE COURT: Be careful, Officer, tell us only what the defendant did or said, nothing else.

THE WITNESS: When they walked in the office, I said, "Michael, do you know who these people are?"

BY MR. ROSENBERG:

Q That is the defendant? A That's right, and he said, "That's the man I held up."

Q That was Mr. Adelman, Harry Adelman? A Yes, sir.

THE COURT: You may cross examine.

## CROSS EXAMINATION

BY MR. LUBKIN:

Q Detective Gillen, where was the defendant first arrested? A He was taken into the 17th Squad and then he was brought to the 66th.

Q Where is that? A East 49th Street, Manhattan. Then he was brought into the 66th Detective Squad where we questioned him and placed him under arrest.

[fol. 66] Q Did you advise him of his right of counsel?

MR. ROSENBERG: I object to the question.

THE COURT: Sustained.

MR. LUBKIN: Exception.

BY MR. LUBKIN:

Q Did you call Mr. Adelman to come down to the precinct to identify the defendant? A Yes, sir.

Q What did you tell Mr. Adelman on the phone and what did he tell you? A I stated we had a suspect in the office.

Q What was the suspect wearing when you picked him up? A If I recall correctly, a black shirt with white in it.

Q Did he have a hat? A No, sir.

Q Jacket? A Not that I recall, no, sir.

Q Did he have a knife on him? A No, sir.

Q Did he have a letter opener on him? A No, sir.

Q Relating to the conversation that you just testified to, did Mr. Adelman or Mrs. Waldinger say anything to you in the defendant's presence? A They stated he was the man that held them up.

Q Was there any other suspect standing in that vicinity? A No, sir.

Q Isn't it customary, Detective, to hold a line-up [fol. 67] when you have a suspect?

MR. ROSENBERG: I object to the question.

THE COURT: Overruled.

A It is customary but on that particular day we had nobody in the office and we didn't do it.



THE COURT: Which came first, the statement of the defendant, as you testified, "This is the man I held up," or the statement of Mr. Adelman? Which came first?

THE WITNESS: The statement of the defendant.

BY MR. LUBKIN:

Q Did you have Mr. Adelman or Mrs. Waldinger at any prior time come to identify any other suspects down to the precinct? A No, sir, I did not.

Q Do you know the name of the detective that escorted the defendant to the 70th Precinct? A To the 66th Precinct?

Q Is it not true that the defendant went from the 66th Precinct to the 70th Precinct? A Oh, yes, for detention he did.

Q Do you know the name of the detective that escorted him to the 70th Precinct? A No, sir, I do not.

Q Was one of the detectives a Detective Corvelli? A It may have been. I can't recall exactly who escorted [fol. 68] him.

Q How much money did you find on the defendant when you picked him up?

MR. ROSENBERG: Object to the question—October 14th.

THE COURT: Sustained. This was four days after the event.

MR. LUBKIN: Three.

THE COURT: Objection sustained.

MR. LUBKIN: Exception.

BY MR. LUBKIN:

Q Did you find anything on the defendant's person?

MR. ROSENBERG: Objection to the question, four days later, three days later.

THE COURT: Sustained.

MR. LUBKIN: Exception.

THE COURT: This was four days after the alleged robbery occurred; four days after the alleged robbery is immaterial.

BY MR. LUBKIN:

Q Did you ask the defendant any other questions other than the ones that you testified to here?

THE COURT: Do you press that question, Counselor?

[fol. 69] MR. LUBKIN: Yes, I'd like an answer.

THE COURT: That may open a door to an irrelevant matter, but if you insist on asking the question, all right. He may answer.

A Offhand I don't recall any other questions other than in regard to the hold-up.

Q Did you ask him any other questions than the ones you testified to here today?

THE COURT: First let him answer the question, did you ask him any other questions.

A I presume I did ask him some other questions in regard to it. I asked him how he escaped. I can't recall any right now that I asked him.

BY MR. LUBKIN:

Q Did any other detective in your presence ask him any questions that he gave answers to that you overheard? Did you hear anybody else in your presence ask him any questions that the defendant gave answers to?

A No, sir, not that I recall.

Q Were you present when the alleged statement that was formerly introduced into evidence was made? A The statement to Mr. Postal, no, sir, I was not.

Q You were not? A No, sir.

MR. LUBKIN: I have no further questions.

(The witness was excused.)

[fol. 70] EDWARD NEMETH, called as a witness by the People, being first duly sworn by the Clerk of the Court, and stating his address as 207 Clinton Street, Manhattan, testified as follows:

DIRECT EXAMINATION

BY MR. ROSENBERG:

Q Mr. Nemeth, how old are you? A Twenty.

Q Do you know this defendant, Michael Vignera? A Yes.



Q How long have you known the defendant? A I knew him for about five months.

Q Were you employed in a firm by the name of Fascination on 42nd Street, Manhattan? A 49th Street.

Q What kind of a firm is that? A It is like a game of skill, competing against other players to win prizes.

Q Did you meet the defendant there? A Yes.

Q Now, on October—sometime in October of 1960, did you see the defendant at your place of employment?

A Yes.

Q Can you fix a date? A October 14th about 4:00 p.m.—I mean 4:00 a.m., in the morning.

THE COURT: Was it October 14th?

MR. ROSENBERG: That was a Friday.

THE WITNESS: Yes.

[fol. 71] Q Four o'clock in the morning? A Yes.

Q Did you have a conversation with the defendant at that time? A Yes.

Q Can you tell the Court and Jury, please, what the conversation was? A Well, he showed me a Diner's Club Card and told me if I knew anyone who wanted to buy it or if I wanted to buy it, so I told him I couldn't buy it, but I'd try to find out if I could find somebody who wanted to buy it, but we couldn't find anybody who wanted to buy it, so he told me, well, if you want to make some money with it, we can go in the morning, the next morning. He give me an address and we'd go to a store and get some jewelry with the card and then he'd give me some money for it.

Q I show you this Diner's card and ask you whether this is the card that he showed to you? A Yes.

MR. ROSENBERG: I offer it in evidence, subject to connection.

THE COURT: It may be received subject to connection, subject to a motion to strike it out if not connected.

(Received in evidence.)

Q Did you see the name of Harry Adelman on that Diner's car? A I did.

[fol. 72] MR. ROSENBERG: May I pass it to the jury, your Honor?

THE COURT: Pass it to the jury.

(Jury examines exhibit.)

(Marked People's Exhibit 5 in evidence.)

Q Now, tell us the rest of the conversation you had with the defendant. A Well, the next day he gave me his address to call him up the next day. See, it was four a.m. in the morning when he give it to me. I put the address on the back of my pay slip.

Q What was the address? A 14th Street and Third Avenue—I don't remember the number.

Q Was it a hotel? A Yes.

Q Well, go ahead. A The next day about eleven o'clock in the morning—

Q In the morning, that would still be October 14th? A Yes.—I met him at the hotel. I woke him up. I said, okay, maybe I can get some money from it. He said, "You'll have to go to the jewelry store. I'll show you a jewelry store." So we went to the jewelry store on Madison Avenue. I walked in and he stood outside, and I asked the guy for a pair of earrings in the window. So he says, well, he'd have to find out if this card was okay or not, if it's yours. So I told him, "All right, you can call up [fol. 73] and find out if it was all right or not." So he did, and while I was waiting, I was arrested in the store.

Q Had the defendant said anything to you about this Diner's card? A He said he could get all he wanted. It belonged to his brother-in-law. His brother-in-law worked in the Diner's Club Company.

Q Did anyone point out this jewelry shop to you? A We were both walking up the Avenue and he said, "Here's the place where they use Diner's Club Cards."

Q Where did the defendant remain? A He remained outside.

Q When you were arrested, then you were taken out by a policeman, is that correct? A Yes.

Q Did you see the defendant there outside? A I did not.

Q He was no longer there? A No.

\* \* \*

[fols. 74-145] \* \* \*

## [fol. 146] THE COURT'S CHARGE TO JURY

Therefore the first question before you is this: did he make a confession (a), to the police officer, (b) to the Assistant District Attorney, and is there any evidence that any coercion was used upon him or any violence or intimidation, either physical or psychological. It must be proven beyond a reasonable doubt that the confession was a voluntary confession and you will be guided by the evidence.

If the confession under consideration is voluntary, then it is for you to determine whether it is true. If not true in whole, is it true in part. And if it is true in part, whether that part which remains is true and is also voluntary is tantamount to a confession. Confession is an admission of the guilt of the crime charged voluntarily made and which admission is true. That is the law with reference to confessions. There is no law that says that a confession has to be in writing and signed by the defendant or signed before a Notary Public. There is no such law. Confession may be by word of mouth. It need not even be recorded by a stenographer. There is no formality about a confession. The law doesn't say that the confession is void or invalidated because the police officer [fol. 147] didn't advise the defendant as to his rights. Did you hear what I said? I am telling you what the law of the State of New York is.

Under our law, a police officer is not required to tell him "You don't have to answer unless you wish and everything you say can be used against you." The law does not require that that warning be given by the police officer in the State of New York. If it is not given, it does not because of the failure to give such advice invalidate the confession.

\* \* \* \*

[fols. 148-159] \* \* \*

[fol. 160]

IN THE COUNTY COURT, KINGS COUNTY

STATEMENT No. 2294

FOLIO NO. 91

STATEMENT TAKEN AT THE 70 PRECINCT,  
BROOKLYN, NEW YORK, ON OCTOBER 14, 1960,  
COMMENCING AT ABOUT 11:05 P.M., BY AS-  
SISTANT DISTRICT ATTORNEY POSTAL.

Present: No one.

HEARING REPORTER: Vito Lentini.

BY MR. POSTAL:

Q What is your name? A Michael Vignera.

Q Where do you live? A 970 42nd Street.

Q How old are you? A Thirty-one.

Q On October 11, 1960, did you go to a dress shop at  
4822 13 Avenue, in Brooklyn? A Yes.

Q What time did you go there? A About 4:00  
o'clock, I think.

Q Could it be as late as 5:30 or later? A No.

Q Did you go there alone? A Yes.

Q Did you have any weapon with you? A A toy  
gun.

Q Where did you have the toy gun when you went  
into the store? A My pocket.

Q When you got into the store how many people were  
there? A I only saw two.

Q What did you do with reference to the gun? Did  
you take it out of your pocket? A Yes.

Q Then what did you do with it? A I announced it  
was a holdup.

Q Did you point the gun at anybody? A It wasn't  
actually necessary but I guess I did.

[fol. 161] Q You waved it at him, is that the idea? A  
Yes.

Q Did you ask the man for his money? A Yes.

Q How much money did you get from him? A I got  
\$93.00.

Q Where did he take the money from that he gave you? A Some, I think, was from the register; some from his pockets, I guess.

Q Did you say anything to the man after he gave you the money? A No, I just walked out.

Q Was anybody involved in this job with you? A No.

Q How did you happen to pick this particular place? A The spur of the moment.

Ended: 11:08 p.m.

[fol. 162]

IN THE SUPREME COURT: KINGS COUNTY  
CRIMINAL TERM: PART VII

PEOPLE OF THE STATE OF NEW YORK

*against*

MICHAEL VIGNERA, DEFENDANT

Ind. No. 4014—1960

Brooklyn, N. Y.

TRANSCRIPT ON RESENTENCE—February 6, 1963  
BEFORE:

HON. SAMUEL S. LEIBOWITZ, Justice

APPEARANCE:

ARTHUR LUBKIN, Esq., for the Defendant.

. . . . .

[fol. 163] THE COURT: You may make your motion to set the sentence aside, counsel.

MR. LUBKIN: Your Honor, I move to set the sentence aside due to the fact that the United States District Court, Western District of New York, in an order dated December 31, 1962, by Judge Henderson, held that the

conviction in Florida, Dade County, in 1947, is invalid under constitutional grounds. Therefore, Michael Vignera should be sentenced as a second felony offender as of the time you originally sentenced him.

I would like to add something, your Honor. Due to the fact that the Florida conviction at the time of sentence played an integral part in your decision in the sentencing, and due to the fact that in actuality now, it is held to be unconstitutional, I feel that you should reconsider your previous sentencing in light of these late developments.

Therefore, I request the Court to lower the sentence that was originally given, which was 30 to 60 years.

THE COURT: The main point of the sentence is not the technical adjudication as to whether the defendant is [fol. 164] a second, third, fourth or fifth or sixth felony offender. We are not sentencing technicalities. We are sentencing the criminal, and this man is a veteran criminal from way back.

I sentenced him to the New York City Reformatory for burglary in 1945. Then in 1949 he was sentenced to the penitentiary for conspiracy to commit armed robbery. In 1952 he was arrested for burglary and assault in Los Angeles. The matter was dismissed. In 1953, he was convicted of robbery and sentenced by the Late Judge Marasco to a term of five to ten years in Sing Sing, and in 1960, when he got out of Sing Sing, just a short time after he was paroled, he was locked up for assault, and the charge was withdrawn.

Arraign the defendant for sentence.

The sentence heretofore imposed on November 3, 1961, is hereby vacated and set aside, and the defendant will be resentenced.

THE CLERK: What is your name?

THE DEFENDANT: Michael Vignera.

THE CLERK: Michael Vignera, if there is any legal cause or other reason why judgment of the law should not be pronounced upon you, say it now and address yourself [fol. 165] to the Court.

Is there anything you want to say, Michael Vignera, or do you want your attorney, Mr. Arthur Lubkin, to speak for you, or both of you may speak.



**THE DEFENDANT:** I am not guilty of the crime, your Honor.

**THE COURT:** I could give this man, as a second offender, 59 to 60 years in States Prison. He was armed with a dangerous knife, and I could add an additional sentence of 5 to 10 years, but I will adhere to the original sentence.

The defendant is sentenced to a term of 30 to 60 years in Sing Sing.

The defendant is remanded.

(Defendant remanded)

[fol. 166]

# IN THE SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION—SECOND JUDICIAL DEPARTMENT

ORDER OF THE APPELLATE DIVISION—May 4, 1964

By Beldock, P.J.: Kleinfeld, Christ,  
Brennan and Hill, JJ.

PEOPLE, &C, res, v. MICHAEL VIGNERA, ap—Appeal by defendant: (1) from a judgment of the former County Court, Kings County, rendered November 3, 1961, after a jury trial, convicting him of robbery in the first degree and sentencing him, as a third felony offender, to serve a term of thirty to sixty years; and (2) from a judgment of the Supreme Court, Kings County, rendered February 6, 1963, after a hearing, resentencing him, as a second felony offender, to serve the same term of imprisonment. Judgment of February 6, 1963, on resentence, affirmed. No opinion. Appeal from original judgment of November 3, 1961, dismissed as moot.

[fol. 167]

IN THE SUPREME COURT OF THE STATE  
OF NEW YORK, APPELLATE DIVISION—

SECOND JUDICIAL DEPARTMENT

Appeal # 3171

• • • • •

Present—HON. GEORGE J. BELDOCK,  
*Presiding Justice.*

“ PHILIP M. KLEINFELD,  
“ MARCUS G. CHRIST,  
“ ARTHUR D. BRENNAN,  
“ L. BARFON HILL,

*Justices.*

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT

*v.*

MICHAEL VIGNERA, APPELLANT

ORDER ON APPEALS FROM JUDGMENTS.—May 4, 1964

The above named Michael Vignera, defendant, in this action having appealed to the Appellate Division of the Supreme Court from a judgment of the former County Court, Kings County, rendered November 3, 1961, after a jury trial, convicting him of robbery in the first degree and sentencing him, as a third felony offender, to serve a term of 30 to 60 years; and the said defendant having also appealed from a judgment of the Supreme Court, Kings County, rendered February 6, 1963, after a hearing, resentencing him, as a second felony offender, to serve the same term of imprisonment, herein, and the said appeals having been argued by Mr. Robert S. Rifkind of Counsel for appellant, and argued by Mr. William I. Siegel, Assistant District Attorney, of Counsel for respondent, and due deliberation having been had thereon; and upon the opinion and decision slip of the court herein, heretofore filed, and made a part hereof:



It is Ordered and Adjudged that the judgment of February 6, 1963, on resentence, so appealed from, be and the same hereby is unanimously affirmed, and it is

Further Ordered that the appeal from original judgment of November 3, 1961, be and the same hereby is dismissed as moot.

Enter:

JOHN J. CALLAHAN  
Clerk.

Filed May 13 1964

[fol. 168]

[Clerk's Certificate to foregoing  
paper omitted in printing.]

[fol. 169]

IN THE COURT OF APPEALS OF THE STATE OF  
NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT

v.

MICHAEL VIGNERA, APPELLANT

Argued March 8, 1965

Crimes—statement made before arraignment—defendant was convicted of robbery in first degree—contentions by defendant that admission into evidence of statement made by him during interrogation prior to arraignment violated his privilege against self incrimination and constituted denial of due process, that admission of testimony as to statements made by him during period when his arraignment had been unreasonably delayed constituted denial of due process, and that trial court committed reversible error in making certain statement with reference to testimony of prosecution witness and in foreclosing defense counsel from making further inquiry with respect thereto—judgment of conviction was properly affirmed.

*People v. Vignera*, 21 A D 2d 752, affirmed.

DECISION—decided April 15, 1965.

APPEAL, by permission of an Associate Judge of the Court of Appeals, from a judgment of the Appellate Division of the Supreme Court in the Second Judicial Department, entered May 4, 1964, affirming a judgment of the Supreme Court (SAMUEL S. LEIBOWITZ, J.), entered in Kings County, which resentenced defendant as a second felony offender, rendered upon a verdict which, following a trial in the former Kings County Court, convicted defendant of the crime of robbery in the first degree. The indictment charged, in part, that on October 11, 1960 defendant, while armed with a dangerous knife, unlawfully took checks and currency from one Harry Adelman. In the Court of Appeals defendant argued that the admission into evidence of a statement made by him during an

interrogation by an Assistant District Attorney prior to his arraignment deprived him of his right to counsel, violated his privilege against self incrimination and constituted a denial of due process since he had not, at the time of making the statement, been advised of his right to counsel or his privilege against self incrimination; that the admission of testimony as to statements made by defendant during a period when his arraignment had been unreasonably delayed constituted a denial of due process, and that the trial court committed reversible error in stating, with reference to the testimony of a prosecution witness who had received a suspended sentence in a criminal prosecution in New York County, that the Kings County District Attorney had nothing to do with the witness' case in New York County and in foreclosing defense counsel from inquiring into the possibility that [fol. 170] the witness' suspended sentence and testimony upon defendant's trial were the product of an understanding between the witness and the prosecutors involved. The People argued that defendant had no constitutional right to be advised of his right to counsel or his privilege against self incrimination during the interrogation period prior to his arraignment; that the alleged delay in arraignment would not, in and of itself, render inadmissible any statements made by defendant during the period of the alleged delay, and that, although the trial court erred in making the statement with reference to the testimony of the prosecution witness who had received a suspended sentence in New York County and in foreclosing defense counsel from making further inquiry with respect thereto, the error did not require reversal since defendant's guilt was established beyond a reasonable doubt without the testimony of said witness.

*Robert S. Rifkind and Anthony F. Marra* for appellant.

*Aaron E. Koota, District Attorney (William I. Siegel of counsel)*, for respondent.

Judgment affirmed; no opinion.

Concur: Chief Judge DESMOND and Judges DYE, FULD, VAN VOORHIS, BURKE, SCILEPPI and BERGAN.

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[fol. 171]

IN THE COURT OF APPEALS OF THE STATE OF  
NEW YORK

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 15th day of April in the year of our Lord one thousand nine hundred and sixty-five, before the Judges of said Court.

WITNESS,

The HON. CHARLES S. DESMOND,  
Chief Judge, *Presiding*.

RAYMOND J. CANNON, *Clerk*.

REMITTITUR—April 15, 1965

Filed May 18 1965

[fol. 172]

THE PEOPLE &C., RESPONDENT

*vs.*

MICHAEL VIGNERA, APPELLANT

BE IT REMEMBERED, That on the 10th day of November in the year of our Lord one thousand nine hundred and sixty-four, Michael Vignera, the appellant—in this cause, came here unto the Court of Appeals, by Anthony F. Marra and Robert S. Rifkind, his attorneys, and filed in the said Court a Notice of Appeal and return thereto from the judgment of the Appellate Division of the Supreme Court in and for the Second Judicial Department. And The People &c., the respondent—in said cause, afterwards appeared in said Court of Appeals by Aaron E. Koota, District Attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

[fol. 173]

WHEREUPON, The said Court of Appeals having heard this cause argued by Mr. Robert S. Rifkind, of counsel for the appellant—, and by Mr. William I. Siegel, of counsel for the respondent—, and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

[fol. 174] THEREFORE, it is considered that the said judgment be affirmed, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

/s/ Raymond J. Cannon  
*Clerk of the Court of Appeals of the State of New York*

[Clerk's Certificate to foregoing  
 paper omitted in printing.]

[fol. 175]

IN THE COURT OF APPEALS OF THE STATE OF  
NEW YORK

\* \* \* \*

Present, HON. CHARLES S. DESMOND,  
*Chief Judge, presiding.*

Mo. No. 478

THE PEOPLE &C., RESPONDENT

*vs.*

MICHAEL VIGNERA, APPELLANT

ORDER AMENDING REMITTITUR—May 20, 1965

A motion to amend the remittitur in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is granted, the return of the remittitur requested and, when returned, it will be amended by adding thereto the following:

Upon the appeal herein there were presented and necessarily passed upon questions under the United States Constitution, viz:

- (1) Whether, in the circumstances of this case, the admission in evidence of a confession elicited prior to arraignment by an Assistant District Attorney from defendant-appellant and recorded by a stenographer constituted a denial of his rights under the Fourteenth Amendment to the United States Constitution;
- (2) Whether, in the circumstances of this case, the admission in evidence of police testimony as to statements elicited from defendant-appellant constituted

a denial of his rights under the Fourteenth Amendment to the United States Constitution.

The Court of Appeals held that no rights of defendant-appellant under the Fourteenth Amendment to the United States Constitution had been violated.

AND the Supreme Court of Kings County hereby is requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

[SEAL]

\* \* \* \*

[fol. 176]

# SUPREME COURT OF THE UNITED STATES

No. 397 Misc., October Term, 1965

MICHAEL VIGNERA, PETITIONER

v.

NEW YORK

On petition for writ of Certiorari to the Court of Appeals of the State of New York.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN  
FORMA PAUPERIS AND GRANTING PETITION FOR WRIT  
OF CERTIORARI—November 22, 1965

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 760 and placed on the summary calendar and set for oral argument immediately following No. 419, Misc.